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11 MAY 1999

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In re Application of :
Deckman et al : DECISION ON
Application No.: 08/545,707 :
PCT No.: PCT/EP94/01301 : PETITION
Int. Filing Date: 25 April 1994 :
Priority Date: 23 April 1993 : UNDER 37 CFR 1.47(a)
Attorney's Docket No.: 93A007 :
For: MOLECULAR SIEVE LAYERS AND :
PROCESSES FOR THEIR MANUFACTURE :

This decision is responsive to applicant's "REQUEST FOR FILING UNDER 37 C.F.R. 1.47(b)" filed 14 September 1998, which has been treated as a petition under 37 CFR 1.47(a). The petition under 37 CFR 1.47(a) is DISMISSED.

BACKGROUND

On 06 March 1998, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for submitting an oath or declaration later than 30 months from the priority date must be filed. The notification set a one-month time limit in which to respond.

On 14 September 1998, applicant filed the following papers:

- (1) a petition and fee for a five-month extension of time;
- (2) the surcharge for submitting the declaration later than 30 months from the priority date;
- (3) a declaration executed by eight of the eleven inventors;
- (4) a petition and fee for the petition under 37 CFR 1.47(a).

DISCUSSION

The papers were filed utilizing the provisions of 37 CFR 1.8. The certificate of mailing indicates that the response was mailed on September 8, 1998. Since applicant filed a petition and fee for a five-month extension of time, the period for response expired on Monday 08 September 1998 (06 September 1998 was a Saturday).

Since at least one inventor has signed the declaration, the application cannot be made under 37 CFR 1.47(b). Accordingly, the petition will be treated as a petition filed under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The petition alleges that Mr. Keizer would not be able to sign the Declaration until next week. Such a reason is inadequate to establish that the inventor cannot be reached after diligent effort. According to MPEP 409.03(d), "The fact that a non-signing inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47. Such a petition will be dismissed as inappropriate." Accordingly, applicants' petition is dismissed.

Since applicant did not file a acceptable declaration within the time period set for the response, the application is abandoned as of midnight on 08 September 1998.

RECOMMENDATION

Applicant may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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